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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

FREDDY PEREZRODAS,

Defendant and Appellant.

E071245

(Super.Ct.No. SWF1500424)

OPINION

APPEAL from the Superior Court of Riverside County. John M. Monterosso,
Judge. Affirmed.

Kevin J. Lindsley, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

A jury found defendant and appellant, Freddy Perezrodas, not guilty of premeditated murder, but guilty of second degree murder (Pen. Code, § 187, subd. (a); count 1)¹ and arson (§ 451, subd. (b); count 2).² The jury also found that defendant personally and intentionally discharged a firearm, causing great bodily injury or death. (§ 12022.53, subd. (d).) The court sentenced defendant to an eight-year determinate term for the arson conviction plus 40 years to life—15 years to life for the murder conviction plus 25 years to life for the firearm enhancement. Counsel for defendant filed a petition for writ of habeas corpus requesting the court to exercise its newfound discretion to strike the firearm enhancement, which the court denied.

After defense counsel filed a notice of appeal, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the facts, a statement of the case, and one potentially arguable issue: whether the court abused its discretion in denying defendant's request that it strike the firearm enhancement. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

On July 23, 2014, defendant shot his wife three times, killing her, during what defendant later claimed was a heated argument in the upstairs bedroom of the couple's

¹ All further statutory references are to the Penal Code.

² By order dated March 27, 2019, we took judicial notice of the record in defendant's appeal from his conviction and judgment, case No. E065032.

home. Defendant claimed he shot his wife in the heat of passion. He claimed they were arguing because she had been having an extramarital affair and insulted defendant during the argument. Defendant also claimed he shot her in self-defense while she was retrieving a handgun from her purse to shoot him.

Defendant wrapped his wife's body in a tarp, set fire to the house, and took her body to a storage unit. Later that day, defendant returned to the house. He called 911 to report that the house was on fire and that his wife might be inside. Following four hours of police questioning on July 23 and 24, defendant confessed to the homicide but claimed he shot his wife in both self-defense and in a sudden quarrel or heat of passion.

Defendant appealed his conviction, raising three claims of prejudicial instructional error: (1) the pattern instruction on voluntary manslaughter (CALCRIM No. 570) erroneously informed the jury it was his burden to adduce "affirmative proof" that he killed his wife in the heat of passion; (2) the pattern instruction on self-defense (CALCRIM No. 505) erroneously informed the jury that he did not act in lawful self-defense if he harbored any emotion other than fear for his life, including anger, when he shot her; and (3) CALCRIM No. 505 and the other instructions wrongly implied he was guilty of murder if he had "mixed motives" when he shot and killed his wife and lessened the prosecution's burden to prove he acted with malice. By opinion dated July 7, 2017, we affirmed the judgment.

On January 10, 2018, defense counsel filed a petition for writ of habeas corpus seeking a hearing for the court to exercise its discretion, pursuant to newly enacted Senate Bill No. 620 (2017-2018 Reg. Sess.), to strike or dismiss the firearm enhancement. On February 2, 2018, the court ordered the People to file an informal letter response to the petition. On March 12, 2018, the People filed an informal letter response to the petition in which they conceded defendant was entitled to a hearing at which the court could exercise its discretion whether to strike the firearm enhancement.

On March 20, 2018, the court granted defendant a hearing on his petition. On August 24, 2018, the People filed a sentencing memorandum in which they argued the court should decline to exercise its discretion to strike the firearm enhancement. On August 30, 2018, defense counsel filed a memorandum of points and authorities requesting the court to strike the firearm enhancement.

On August 31, 2018, the court held a hearing on defendant's request that it strike the firearm enhancement. The court heard the testimony of defendant and his brother, as well as counsels' arguments. The court denied defendant's request, declining to exercise its discretion to strike the firearm enhancement.

II. DISCUSSION

We offered defendant an opportunity to file a personal supplemental brief, which he has not done. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues.

III. DISPOSITION

The judgment is affirmed.

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McKINSTER
Acting P. J.

We concur:

MILLER
J.

RAPHAEL
J.